

Reference: 438840

18 October 2017

S40

Information Requests  
Ofcom

[information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk)

## Freedom of Information: Right to know request

Dear S40 ,

Thank you for your request for information, dated 10 July, asking for correspondence between Ofcom and the Home Office (between 20 February and 10 July 2017), regarding GSM gateways. Ofcom has considered your request under the Freedom of Information Act 2000 (the Act).

*You asked:*

*“Details of correspondence between Ofcom and the Home Office regarding GSM Gateways between 20th February 2017 and 10th July 2017:*

*Meeting dates and times, attendees and any minutes;*

*Emails, including complete email threads;*

*Telephone calls with attendance notes, dates, times and details of attendees.”*

As you may be aware, Ofcom published a Statement on GSM Gateways on 6 July 2017, available at: [https://www.ofcom.org.uk/consultations-and-statements/category-2/commercial-multi-user-gateway-review?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=comugs-statement](https://www.ofcom.org.uk/consultations-and-statements/category-2/commercial-multi-user-gateway-review?utm_source=updates&utm_medium=email&utm_campaign=comugs-statement)

I am writing to confirm that Ofcom has now completed its search for relevant documents falling within your request.

We hold correspondence which is responsive to your request and it is attached to this letter.

Redactions have been made to/Information falling within scope of your request is exempt from disclosure under Section 36 of the Act. Section 36 exempts information from disclosure if it would, or would be likely to, inhibit the free and frank provision of advice or views for the purposes of deliberation or prejudice the effective conduct of public affairs. This is a qualified exemption and is subject to a public interest test. Broadly, this means that the information should only be withheld under the exemption where the public interest in doing so outweighs

that in favour of disclosure. The public interest test is detailed in Annex B to this letter. In the letter in Annex A, Steve Gettings as a “qualified person” confirms that in his reasonable opinion it is not in the public interest for Ofcom to disclose the information. Redactions have also been made to limited parts of the attached documents which relate to personal data. This information is being withheld as it falls under the exemption section 40 of the Act, which relates to personal information and which provides that such information is exempt for the purposes of the Act.

We have records of calls between Ofcom and the Home Office regarding this matter, which took place on 3 and 4 July. The notes have been redacted under section 36, for the reasons explained above.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely,

S40

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

#### Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exception cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Steve Gettings  
The Secretary to the Corporation  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## Annex A

### Freedom of Information: Right to know request

#### *Section 36 exemption*

The information you requested is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act.

I am a "qualified person" as defined in section 36(2) of the Freedom of Information Act 2000 and duly authorised by a Minister of the Crown for the purposes of that section. In my reasonable opinion, disclosure of the information requested would, or would be likely to, inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation, and so would or would be likely to prejudice the effective conduct of public affairs.

Also, in applying this exemption I have had to balance the public interest in withholding the information against the public interest in disclosing the information.

I have set out in Annex B the exemption in full, as well as the factors I considered when deciding where the public interest lay in this case.

If you have any queries about this letter, please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk).

A handwritten signature in blue ink that reads "S. Gettings." with a horizontal line underneath.

**Steve Gettings**  
**Secretary to the Corporation**  
**Ofcom**

17 October 2017

**Annex B**

**Section 36: Prejudice to Effective Conduct Of Public Affairs**

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation; or
- prejudice the effective conduct of public affairs.

**Key points:**

- Section 36 can only be used if, in the **reasonable view of a "qualified person"**, disclosure of the requested information would have one of the specified effects.
- The application of section 36 is subject to a public interest balance.

<b>Factors for disclosure</b>	<b>Factors for withholding</b>
<ul style="list-style-type: none"> <li>• The desirability of citizens being confident that decisions are taken on the basis of the best available information;</li> <li>• Knowledge that the arguments relating to a debate will be disclosable may improve the quality of those arguments.</li> </ul>	<ul style="list-style-type: none"> <li>• Ofcom, as a sector regulator, depends heavily on its on-going relationship with Stakeholders. Stakeholders would be less willing to come forward and discuss necessary policy issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that what they said to us would be made public.</li> <li>• In addition, to regulate effectively, Ofcom needs to be able to think through all the implications of particular policy options and undertake without prejudice rigorous and candid assessments.</li> </ul>

**Reasons why public interest favours withholding information**

A consequence of disclosure would be that stakeholders would be less likely to come forward and discuss important policy issues, and be less open, with Ofcom. Ofcom would therefore be less able to gauge Stakeholders’ views as to how effective its regulation is. Also to disclose internal correspondence would mean that Ofcom employees would be less likely to discuss policy issues openly and explore all possible regulatory options. These factors would in turn lessen Ofcom’s ability to meet its statutory obligation to ensure its regulation is effective and appropriate. This would be against the public interest.